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No. 82-740

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

SHEARN MOODY, JR.,
Petitioner,
v.

STATE OF ALABAMA EX REL.
THARPE FORRESSTER, COMMISSIONER OF
INSURANCE OF THE STATE OF ALABAMA

and

PROTECTIVE LIFE INSURANCE CO.,
Respondents.

MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*, THE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Washington Legal Foundation hereby moves this Court pursuant to Supreme Court Rules 36 and 42, for leave to file the annexed brief *amicus curiae* in support of the petition for writ of certiorari in the above-captioned proceeding. Consent to the filing of this brief has been granted by counsel for petitioner. Counsel for respondent Protective Life Insurance Company has been contacted and has withheld consent.

The Washington Legal Foundation (WLF) is a national non-profit public interest law center that engages

in litigation and the administrative process in matters affecting the broad public interest. WLF has more than 85,000 members throughout the United States whose interests the Foundation represents.

WLF participates in and has devoted a substantial portion of its resources to cases relating to government regulations and constitutional law involving the rights of citizens and businesses. WLF has appeared in the United States Supreme Court on many occasions as *amicus curiae*. Briefs *amicus curiae* of the Foundation have been filed with and accepted by the United States Supreme Court in cases such as *Consolidated Edison Co. of New York v. Public Service Commission of the State of New York*, 100 S. Ct. 2326 (1980); *United Steel Workers v. Weber*, 443 U.S. 193 (1979); *Carbon Fuel Co. v. United Mine Workers*, 442 U.S. 939 (1979); *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979); and *Federal Trade Commission v. Standard Oil Co. of California*, 100 S. Ct. 62 (1980). More significantly, WLF filed, and this Court accepted over opposition, a brief *amicus curiae* in support of the petition for writ of certiorari in *Moody v. Forresster*, No. 80-1235 (U.S. filed Feb. 20, 1981), *cert. denied*, 101 S. Ct. 1733 (1981), a case related to the instant one.

WLF believes that it is in the public interest to assure that all citizens have meaningful access to federal and state courts to vindicate their rights and that federal and state courts respect the authority of each other. WLF submits that the Alabama Supreme Court's decision which denies petitioner his day in federal court clearly violates this Court's rule in *Donovan v. City of Dallas*, 377 U.S. 408 (1964), and denies petitioner his First Amendment rights as well as his underlying economic rights protected under the Fifth and Fourteenth Amendments. Such a result is contrary to the public interest and would set a dangerous precedent in this area by allowing state

courts to close the doors of the federal courts not only on petitioner, but also on hundreds of other individuals, businesses, and corporations that may seek to vindicate their rights in this and other areas.

Accordingly, the Washington Legal Foundation respectfully requests that it be permitted to participate as *amicus curiae* in this matter.

Respectfully submitted,

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INTERESTS OF *AMICUS CURIAE* WASHINGTON LEGAL FOUNDATION

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STATEMENT OF THE CASE

In the interests of judicial economy, *amicus* hereby adopts by reference the Statement of the Case contained in the Petition for Writ of Certiorari at 2-8.

REASONS FOR GRANTING THE WRIT

I. THE ALABAMA SUPREME COURT HAS UNCONSTITUTIONALLY PREVENTED PETITIONER FROM FILING AN *IN PERSONAM* ACTION IN FEDERAL COURT.

A. A State Court Cannot Enjoin An *In Personam* Action In Federal Court Which Will Not Divest The State Court of Control or Jurisdiction Over the *Res*.

This Court has carefully developed a body of law over the years designed to resolve the conflict of jurisdiction exercised by state and federal courts. *Amicus* submits that the Alabama Supreme Court has violated these constitutional principles by denying petitioner his right to file the proposed *in personam* complaint for money damages in federal court.

As explained by this Court in *Donovan v. City of Dallas*, 377 U.S. 408 (1964):

> Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings. That rule has continued substantially unchanged to this time. An exception has been made in cases where a court has custody of property, that is, proceedings *in rem* or *quasi in rem*. In such cases this Court has said that the state or federal court having custody of such property has exclusive jurisdiction to proceed. *Princess Lida v. Thompson*, 305 U.S. 456, 465-468.

Id. at 412 (footnote omitted).

In no case, however, may a state court enjoin an *in personam* action brought in federal court simply because the issues raised in the complaint may relate to or involve certain facts and circumstances arising out of the state court *in rem* proceeding. As the *Donovan* Court reiterated, "the old and well-established judicially declared rule [is] that state courts are *completely without power* to restrain federal court proceedings in *in personam* actions. . . ." *Id.* at 412-413 (emphasis added) (footnote omitted). *See Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Insurance Co.*, 600 F.2d 671 (7th Cir. 1979); 1A, Pt 2 Moore's Federal Practice ¶ 0.222. The *Donovan* Court's phrase "completely without power" could not be stated any clearer. The Alabama court not only ignored this rule in its decision, but also misapplied the narrow exception to it as well.

Attempts by lower courts to expand upon this narrow exception to the noninterference rule have been met with sharp disapproval by this Court. *See, e.g., General Atomic Co. v. Felter*, 434 U.S. 12 (1977). Other courts have had no difficulty in properly following the *Donovan* principle. For example, in *Weisfeld v. Spartans Industry, Inc.*, 58 F.R.D. 570 (1972), a federal suit alleging violations of federal securities laws, the district court stated:

> Defendants argue that plaintiff is in violation of the state court's January 27, 1971, order enjoining any further actions by Spartans' shareholders *arising out of* the transactions or occurrences complained of in the state court consolidated suit. It is well settled, however, that a state court cannot enjoin a person from prosecuting an action in a federal court which has jurisdiction over the parties and subject matter. *Donovan v. City of Dallas*, 377 U.S. 408, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964).

Id. at 577 (emphasis added).

Accordingly, the Supreme Court of Alabama should not be permitted to broaden the scope of the *Donovan* excep-

tion by enjoining a lawsuit which is clearly *in personam*. The fact that all or part of the proposed litigation may *arise out of* or *relate to* events surrounding the receivership proceeding does not mean that petitioner can be barred from litigating those residual or related claims in federal court.

This Court has recently dealt with analogous issues such as the ones presented here, although in a different context. In *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association*, —— U.S. ——, 102 S.Ct. 1357 (1982), this Court granted certiorari and reversed a North Carolina court for failing to give full faith and credit under Article IV to an Indiana judgment concerning a deposit made by the insurer for the benefit of policyholders. In his concurring opinion, Justice White noted the distinction between proceedings *in personam* and those affecting the *res* when he stated:

> The Court adopted a two-fold distinction between control over claims and over assets:
>
> "In so far as [a court order] determines, or recognizes a prior determination of the existence and amount of the indebtedness of the defendant to the several creditors seeking to participate, it does not deal directly with any of the property. [This] function, which is spoken of as the liquidation of a claim, is strictly a proceeding *in personam*. . . . There is no inherent reason why the adjudication of the liability of the debtor *in personam* may not be had in some court other than that which has control of the *res*."

Id. at 1372, *quoting Riehle v. Margolies*, 279 U.S. 218 224 (1929).

Amicus submits that in the instant case, there is similarly a clear distinction between petitioner's *in personam* claim and those that deal directly with the *res*. As in *Underwriters*, there is no inherent reason why the adjudication of petitioner's *in personam* claim may not be

had in some court other than that which has control of the *res*. *See also Purcell v. Summers*, 126 F.2d 390, 395 (4th Cir.), *cert. denied*, 317 U.S. 640 (1942); *Watson v. Jones*, 13 Wall. 679, 720 (1872).

B. The Proposed Complaint Is An *In Personam* Action Which Will Not Deprive The State Court of Jurisdiction Over the Res.

An examination of petitioner's proposed complaint (Pet. for Cert., App. C) indicates that it is one only for substantial money damages under various federal antitrust, anti-racketeering, and civil rights statutes and the common law of Alabama and Texas against certain named individuals. Clearly, the complaint is an *in personam* action. In the Alabama Supreme Court, respondents argued at length, and will no doubt argue here, that many of petitioner's claims set forth in his complaint may be defended or opposed on principles of res judicata and collateral estoppel. Those arguments are, of course, wholly irrelevant to the issue at hand of whether or not the proposed action is *in personam*. The named defendants will have ample opportunity to raise and test the merits of those and any other defenses they may have in federal court *after* the complaint is filed. *See* Fed. R. Civ. P. 8(b), (c).

By focusing on these non-issues and engaging in *ad hominem* arguments, the respondents attempt to obfuscate the only relevant issue before this Court: will the filing of the proposed complaint seeking only money damages in federal court deprive the state court of jurisdiction over the *res* in the Empire Life Insurance receivership proceeding? *Amicus* submits that the only answer to this question is "no."

Significantly, the Alabama Supreme Court never found that petitioner's proposed complaint was not an *in personam* action. *See* Pet. for Cert., App. A. The Alabama

Court merely concluded that the proposed complaint is "inextricably connected with" and would be an "interference with" the receivership proceedings. *Id.* But as already demonstrated, *supra*, the test under *Donovan* is whether the federal complaint is an action *in rem* or *quasi in rem*, that is, will it wrest control over the *res* from the state court. There can be no doubt that the proposed complaint will *not* defeat the state court's jurisdiction over the *res*, and not surprisingly, the Alabama court was unable to find to the contrary.

If the Alabama Court's "connected with" and "interference with" test is allowed to stand, it would not only be a clear departure from the narrow rule in *Donovan*, but would raise other substantial constitutional issues as *amicus* argues, *infra*.

Amicus submits that a federal court is quite capable of preventing any abuse of the judicial process and would be able to monitor the extent, if any, such a federal suit would have on the state court receivership proceedings, which from all appearances, is effectively completed anyway. Furthermore, it is essential to permit the filing of petitioner's complaint as soon as possible lest any right he has be subject to defeat by affirmative demands such as the statute of limitations. Once the complaint is filed, the respondents could ask the federal court to stay the federal proceedings until the final completion of the receivership proceeding if undue interference with the receivership can be shown by the respondent.

For all these reasons, *amicus* submits that the Alabama Supreme Court violated the constitutional principles enunciated by this Court in *Donovan* and its progeny by prohibiting petitioner from filing his *in personam* complaint in federal court.

II. THE ALABAMA SUPREME COURT DECISION VIOLATES THE CONSTITUTIONAL RIGHTS OF PETITIONER AND IMPERMISSIBLY PLACES THE BURDEN ON HIM TO PROVE THAT HIS CLAIM DOES NOT VIOLATE A VAGUE AND OVERBROAD STANDARD.

Article III of the United States Constitution and various federal statutes guarantee citizens of the United States access to the federal courts. *See* 28 U.S.C. § 1251. The Framers recognized that citizens must be allowed to resort to the neutral forum of a federal court in certain cases. For this reason, it has been consistently held that states could not, under the guise of prescribing the modes of redress in their courts or regulating the distribution of their judicial power, enact legislation impairing access to the federal courts. *Marshall v. Baltimore & O. R. Co. v. Henderson*, 57 U.S. 314 (1854); *Hyde v. Stone*, 61 U.S. 170 (1858); *Hayes v. Pratt*, 147 U.S. 557 (1893); *Blacker v. Thatcher*, 145 F.2d 255 (9th Cir. 1944), *cert. denied*, 324 U.S. 848 (1945). A judicial decree of a state court does not differ in any legal respect from a statute enacted by a state legislature, and thus neither can impair access to the federal courts.

Amicus submits that the Alabama court decision which enjoins the petitioner from vindicating his rights in federal court is clearly violative of his constitutional rights of speech, to petition for a redress of grievances, and his property rights under the First, Fifth and Fourteenth Amendments. The denial of petitioner's constitutional rights is particularly egregious where certain of petitioner's claims raise federal issues which can be heard only in a federal court. Furthermore, the nature of those claims raise serious issues and seeks substantial damages for injuries suffered by the petitioner.[1] But even if the

[1] Despite respondents' irrelevant argument below that petitioner's claim was allegedly "harassing and vexatious", the Alabama Supreme Court made no such finding. *See* Pet. for Cert., App. A. If anything, *amicus* submits that petitioner should be commended for his persistence in seeking simply to have his day in court.

proposed suit were simply a mundane commercial law action, this Court has nevertheless found the First Amendment equally availing in such circumstances:

> The litigation in question is, of course, not bound up with political matters of acute social moment, as in *Button*, but the First Amendment does not protect speech and assembly only to the extent it can be characterized as political . . . . [W]here the litigation in question was . . . solely designed to compensate victims of industrial accidents, we rejected the contention . . . that the principles announced in *Button* were applicable only to litigation for political purposes.

United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217, 223 (1967).

Statutes regulating First Amendment freedoms must be *narrowly drawn* to prevent only that evil which it is within the power of the state to control. *Sheldon v. Tucker*, 364 U.S. 479 (1960); *Elfbrant v. Russell*, 384 U.S. 11 (1966). There can be no doubt that this central principle of constitutional law applies with equal force to court orders. The Alabama standard is not narrowly drawn; in fact, the opposite is true.

The Court below also committed reversible error when it implicitly accepted Circuit Judge Barber's claim that petitioner "failed to offer any evidence that the proposed action in the United States District Court did not involve the Empire Life receivership proceedings." Pet. for Cert., App. A at A2. In the first place, *amicus* submits that it is contrary to law and public policy to require petitioner to shoulder the burden of proving that the proposed exercise of his constitutional rights would not defeat the lower court's jurisdiction over the *res*; that burden more properly belongs on those seeking to deny petitioner his fundamental rights. In the second place, *amicus* submits that an examination of the proposed complaint and the entire record herein reveals that the proposed litigation

seeking only money damages will not "involve" or "interfere with" the Empire receivership proceedings. Finally petitioner submits that even if the proposed litigation "involves" or "interferes with" the receivership proceeding, that test is an overly broad one, is fraught with vagueness, and, in any event, is *not* the proper or legal test for determining whether petitioner may maintain a federal action during the pendency of the state receivership proceeding.

There is a distinct two-step process inherent in the Alabama circuit court's January 6, 1975 broadly worded injunction requiring that court's permission before the filing of any suit involving or relating to the receivership proceedings. The first step is the requirement that petitioner seek the prior approval of the Alabama court before filing a proposed action, a requirement that may be triggered in certain *broad* circumstances. The second step is the granting or denying of the request to file a proposed suit, the denial of which can be made only in very *narrow* circumstances. Thus, although petitioner may be required to first seek permission from the lower court if a proposed complaint vaguely "involves" the receivership proceeding, such permission cannot be denied by the state court under the *Donovan* doctrine unless the proposed federal action will in fact divest the state court of *jurisdiction* over the *res*. But in this case, the state court will not be deprived of jurisdiction by petitioner's filing of an *in personam* action. The lower court thus erroneously collapsed the two-step process into one, giving the impression that it believed that its authority to require *prior* application for leave to file a suit was coextensive with its authority to deny that application.

If the vague or overbroad test of "involves" or "interferes with" is allowed to stand, the Court will be sanctioning a wholesale violation of not only petitioner's rights, but the rights of many other citizens who find their conduct subject to state laws and injunctions similar

to those in the instant case. *See* Pet. for Cert., Apps. D, E. Receivership proceedings could last indefinitely and thus effectively be used to deny citizens the opportunity to vindicate their rights as long as the overbroad standard remains extant.

CONCLUSION

The Alabama Supreme Court's decision barring petitioner from filing an *in personam* suit in federal court is in clear conflict with this Court's decision in *Donovan* and violated petitioner's constitutional rights, including his right of access to the courts. Even if his proposed suit is "connected with" or would "interfere with" the receivership, it has not been demonstrated, nor could it be, that petitioner's *in personam* federal action would wrest control of the *res* from the state court, and thus, deprive it of jurisdiction over the receivership proceedings. The Alabama rule would set a dangerous precedent of permitting state courts to interfere with the jurisdiction of federal courts and preclude the litigation of substantial federal claims.

For all these reasons, *amicus* submits that the Alabama Supreme Court's decision is contrary to law and against sound public policy. The Washington Legal Foundation submits that this case raises important constitutional questions concerning the rights of petitioner and the proper functioning of our courts in a dual federal-state system as to warrant plenary review by this Court.

Respectfully submitted,

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